

ENTERED

May 29, 2020

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION****WALTER ALEXANDER SORTO,**
Petitioner,**v.****LORIE DAVIS, Director,**
Texas Department of Criminal Justice,
Correctional Institutions Division,
Respondent.§
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§**H-10-CV-613****ORDER**

Before the Court is Petitioner's request for funding, pursuant to 18 U.S.C. § 3599(f), for a comprehensive adaptive functioning assessment in support of his *Atkins* claims. (Doc. No. 41). The Court previously denied Petitioner's funding request based on the Fifth Circuit's then-operative interpretation of § 3599(f). (Doc. No. 47). However, after the United States Supreme Court concluded that "the Fifth Circuit's interpretation of § 3599(f) is not a permissible reading of the statute," *Ayestas v. Davis*, 138 S. Ct. 1080, 1095 (2018), the Fifth Circuit vacated this Court's funding denial and remanded for reconsideration in light of *Ayestas*. (Doc. No. 61).

Having considered the Fifth Circuit's remand order, *Ayestas*, and the parties' supplemental briefing on the issue, the Court finds that funding for a comprehensive adaptive functioning assessment is "reasonably necessary" for Petitioner's representation. 18 U.S.C. § 3599(f). Further, the Court hereby certifies that an additional \$7,500 in funding to hire Dr. Gilbert Martinez to perform said assessment is "necessary to provide fair compensation for services of an unusual character or duration." 18 U.S.C. § 3599(g)(2).

Petitioner's Motion for Reasonably Necessary Services of Psychologist (Doc. No. 41) is **GRANTED**. The Court authorizes counsel for Sorto to secure the services of Dr. Gilbert Martinez in the total amount of \$7,500.

IT IS SO ORDERED.

SIGNED at Houston, Texas, this the 29th day of May, 2020.

A handwritten signature in black ink, appearing to read "Keith P. Ellison", written over a horizontal line.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE